

RESOLUTION NO. 2015-23

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A FIRST AMENDED AGREEMENT WITH PIVOTAL UTILITY HOLDINGS, INC., DOING BUSINESS AS, FLORIDA CITY GAS, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", TO BECOME THE OFFICIAL ENERGY CONSERVATION PARTNER FOR A TERM, COMMENCING ON THE FIRST AMENDMENT EFFECTIVE DATE AND ENDING ON DECEMBER 31, 2015, WITH AN OPTION TO RENEW FOR A TERM NOT TO EXCEED ONE YEAR UPON AGREEMENT OF THE PARTIES, IN EXCHANGE FOR AN ANNUAL SPONSORSHIP FEE OF \$15,000.00 AND OTHER PROMOTIONAL AND EDUCATIONAL SERVICES, INCLUDING, BUT NOT LIMITED TO, PARTICIPATION IN ENERGY CONSERVATION WEEK.

WHEREAS, pursuant to Hialeah, Fla., Resolution 2013-34 (April 9, 2013), the City of Hialeah entered into a one year sponsorship agreement with Pivotal Utility Holdings, Inc., doing business as Florida City Gas, to become the official Energy Partner of the City of Hialeah;

WHEREAS, it is necessary to amend the Agreement by modifying the scope of services and compensation and extending the contract expiration date to December 31, 2015; and

WHEREAS, the City of Hialeah finds it in the best interest of the community to promote city events and to provide education to the community at large on energy conservation; and

WHEREAS, the City of Hialeah finds that it is in the best interest of the community to amend the original sponsorship agreement and renew the agreement, as amended, for a term commencing on the First Amendment effective date and ending on December 31, 2015, with an option to renew for an additional year upon agreement of the parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a first amended agreement with Pivotal Utility Holdings, Inc., doing business as Florida City Gas, a copy of which is attached hereto and made a part hereof as Exhibit "1", for a term commencing on the effective date of the agreement and ending on December 31, 2015, with an option to renew for one year upon agreement of the parties, in exchange for an annual sponsorship fee of \$15,000.00 and other promotional and educational services, including, but not limited to, participation in Energy Conservation Week.

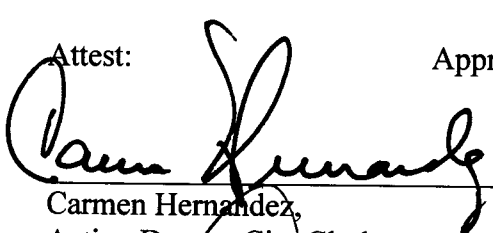
PASSED AND ADOPTED this 10 day of February, 2015.



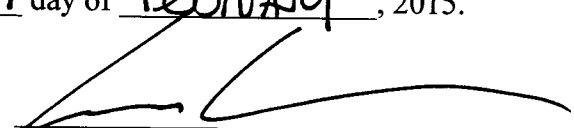
Isis Garcia-Martinez
Council President

Attest:

Approved on this 17 day of February, 2015.

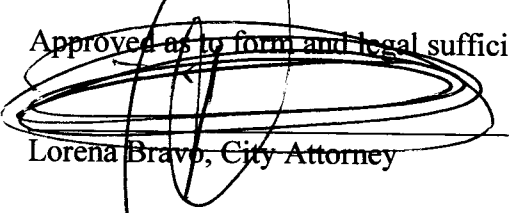


Carmen Hernandez,
Acting Deputy City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



Lorena Bravo, City Attorney

Resolution was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

FIRST AMENDMENT TO
ENERGY CONSERVATION PROGRAM ADVERTISING AGREEMENT

This First Amendment to Energy Conservation Program Advertising Agreement (this "Amendment") is made and entered into as of _____, 2015 (the "First Amendment Effective Date"), by and between the City of Hialeah, a municipal corporation established under the laws of the State of Florida ("Organizer"), and Pivotal Utility Holdings, Inc., a New Jersey corporation, doing business as Florida City Gas ("Sponsor" or "Florida City Gas"), with a local office at 955 East 25 Street, Hialeah, Florida 33013. Organizer and Sponsor are each referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Organizer and Sponsor entered into that certain Energy Conservation Program Advertising Agreement, dated July 16, 2013 (the "Agreement"), under which Organizer granted to Sponsor certain advertising rights and benefits;

WHEREAS, the Agreement expired by its terms on July 16, 2014;

WHEREAS, rather than enter into a new agreement the Parties wish to revive the Agreement and reinstate all of the terms and conditions thereof as they existed prior to expiration; and

WHEREAS, the Parties wish to amend certain terms of the Agreement as described herein.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Organizer and Sponsor agree as follows:

1. Extension of Term of the Agreement. The parties agree to revive and reinstate the Agreement and extend the term of the Agreement through December 31, 2015 so that the Agreement shall be considered to have been continuously in effect since July 16, 2013.
2. Amendment to Recitals. The Recitals section of the Agreement is hereby amended by deleting the third "WHEREAS" clause therein.
3. Amendment to Section 2(b). Section 2(b) of the Agreement is hereby amended by deleting such section in its entirety and replacing such section with the following:

"(b) Organizer shall provide to Sponsor during the Renewal Term (as defined below) of this Agreement the rights and benefits set forth in the document attached hereto as Exhibit "1", which exhibit is hereby incorporated into this Agreement."
4. Amendment to Section 3. Section 3 of the Agreement is hereby amended by deleting such section in its entirety and replacing such section with the following:

"3. [INTENTIONALLY OMITTED]"



5. Amendment to Section 4. Section 4 of the Agreement is hereby amended by deleting such section in its entirety and replacing such section with the following:

“4. **Sponsorship Fee.** In consideration of the full performance by Organizer during the Renewal Term of all of its obligations hereunder and of all rights granted hereunder to Sponsor, Sponsor shall pay to Organizer a sponsorship fee in the total sum of \$15,000.00 (the “Fee”), which fee shall be payable in four equal installments as follows: \$3,750.00 payable within thirty (30) days after the Effective Date; \$3,750.00 payable on April 1, 2015; \$3,750.00 payable on July 1, 2015; and \$3,750.00 payable on October 1, 2015.”

6. Amendment to Section 6. Section 6 of the Agreement is hereby amended by deleting such section in its entirety and replacing such section with the following:

“6. **Term.** This Agreement shall commence on July 16, 2013 and end on December 31, 2015, unless terminated earlier pursuant to the terms of this Agreement. The period beginning on the First Amendment Effective Date and ending on December 31, 2015 is referred to herein as the “Renewal Term”.”

7. Amendment to Exhibit. Exhibit “1” attached to the Agreement is hereby deleted in its entirety and replaced with the Exhibit “1” attached to this Amendment.

8. Capitalized Terms. Capitalized terms used but not defined in this Amendment shall be given the meanings assigned to them in the Agreement.

9. Conflicting Terms. In the event of any conflicts between the Agreement and this Amendment, the terms and conditions of this Amendment shall govern and control.

10. Ratification. This Amendment shall be governed by the Agreement and together with the Agreement shall form a single integrated agreement between the Parties. Except as amended, modified and/or changed by this Amendment, the Agreement remains unchanged and in full force and effect. The Agreement, as modified by this Amendment, is hereby ratified by the parties.

11. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Amendment is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12. Governing Law. This Amendment shall be governed by the laws of the state as set forth in the Agreement.

13. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the First Amendment Effective Date written above.

ORGANIZER:

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010

Attest:

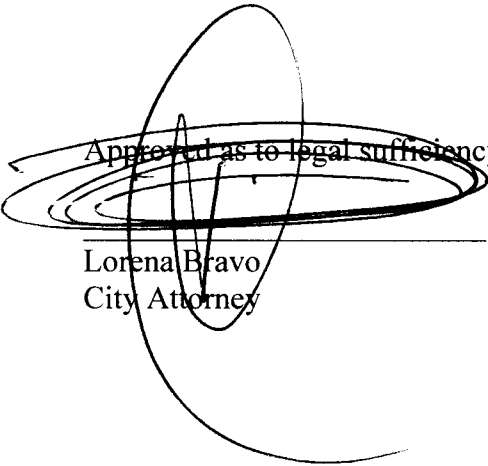
Authorized signature on behalf of
the City of Hialeah, Florida

Carmen Hernandez
Acting Deputy City Clerk

Carlos Hernandez
Mayor

(SEAL)

Approved as to legal sufficiency and form:



Lorena Bravo
City Attorney

SPONSOR:

Pivotal Utility Holdings, Inc. d/b/a
Florida City Gas
955 East 25 Street
Hialeah, Florida 33013

Attest:

Authorized signature on behalf of
Pivotal Utility Holdings, Inc.

Name: _____
Title: _____

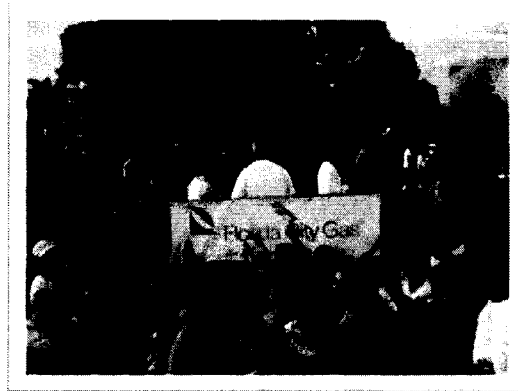
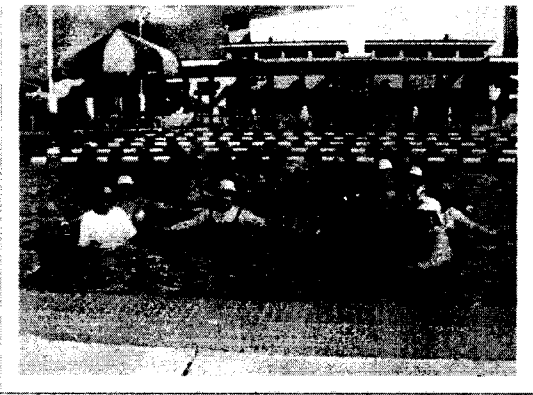
By: _____
Name: _____
Title: _____

Partnership Opportunity For



**Creating Memories and
Conserving Energy Together...**

For Our Future...



FINAL-January 14, 2015

**Partnership Concept
Custom Designed
For**



The Hialeah Partners Program consists of three (3) levels: (listed in order of hierarchy)

- Pillar
- Prestige
- Corporate

Please note that the Corporate Partner level does not include the Naming Rights option.

Your customized designed municipal marketing partnership bundle will include:

PARTNERSHIP BENEFITS

- Florida City Gas will be designated as an Official Energy Conservation Partner of the City of Hialeah.
- Florida City Gas will be designated as an Official Sponsor of the City of Hialeah Aquatics Program.

MARKETING RIGHTS

Energy Conservation Computer Course

Florida City Gas will have the option to create a computer module/on-line energy conservation course that can be made available to the general public and participants of City programs through hyperlinks on www.hialeahfl.gov, the website for the City of Hialeah. Participation in the program will be incentivized. Incentives are to be determined upon mutual consent.

Facility Posting and Distribution of Energy Conservation Marketing Collateral

The City of Hialeah will provide Florida City Gas with marketing space, specifically...

- One counter top display for fliers and/or brochures at each location: (max. size 8 1/2" x 11")

Includes the following locations...

- Milander Aquatic Center
- Milander Center for Arts & Entertainment
- Veteran's Park
- Slade Park
- Bucky Dent Water Park
- McDonald Water Park
- JFK Library and all five (5) e-Libraries
- Additionally, the City of Hialeah will provide Florida City Gas with an advertising opportunity via distribution of promotional materials to...
 - Swimming lesson registrants (3,000 plus annually). City will provide materials to participants upon registration. Materials are designed and produced by Florida City Gas.

- Patrons of JFK Library (average monthly door count of more than 17,000 visitors). City will provide materials to participants at check-out counter.

MEDIA AND PRINT COLLATERAL

Media - Print

- Inclusion in press releases recognizing Florida City Gas as an Official Energy Conservation Partner, the Official Sponsor of the City of Hialeah aquatics program.

Media – Cable TV

- Florida City Gas will be provided air-time on Hialeah Channel 77 to run PSA's promoting energy conservation and specific energy conservation initiatives within the City of Hialeah. Spots to be aired year-round and must be pre-approved by the City of Hialeah. Total number of spots to be determined based upon availability. Spots will also run on hialeahfl.gov, the city's official web site.
- Monthly "Energy Conservation Tip of the Month" (1 – 2 minutes) Presented by Florida City Gas to be aired on Hialeah Channel 77. Spot can be shot and produced by City of Hialeah for the approval of Florida City Gas prior to airing.

Print Collateral

- Ad space (2" x 11') in the 2014 City of Hialeah calendar. Distribution is a minimum of 5,000 copies. Calendars distributed throughout all City facilities and retail outlets (City's network of sponsors and partners). Choice of month based upon availability. Ad space valued at \$1,000.

SIGNAGE RIGHTS

Facility Signage

- Existing signage will be utilized to recognize partnership and promote the message of "Energy Conservation." Any new and/or additional signage costs are to be reimbursed by Florida City Gas.
- Signage concepts, layouts and materials to be agreed upon mutual consent and must comply with City codes and standards.

The City of Hialeah will provide Florida City Gas will signage space at the following locations...

Signage spaces are year-round with the exception of Ted Hendricks Stadium (High School Football Only).

Exterior

Milander Aquatic Center

- One (1) full color mesh banner space (5' x10') for fence panel inside pool deck.

Bucky Dent Water Park

- One (1) full color mesh banner space (5' x10') for fence panel inside pool deck.

McDonald Water Park

- One (1) full color mesh banner space (5' x10') for fence panel inside pool deck.

Ted Hendricks Stadium

- Two (2) mesh banner (5' x10') for fence panel in end zone for the 2015 high school football season.

Arena Soccer Complex at Goodlet Park

- Two (2) full color pressure sensitive vinyl signage spaces (approx. size 5' x 8") for dasher board panel. One (1) per each field.

Ernest Graham Park (Alex Fernandez Field)

- One (1) mesh banner (5' x10') for fence panel in end zone for the 2015 high school football season.

Walker Park Baseball Field

- One (1) mesh banner (5' x10') for fence panel in end zone for the 2015 high school football season.

Milander Center

- Messages on electronic marquee and promoting Florida City Gas as Official Energy Conservation Partner of the City of Hialeah in conjunction with Energy Conservation Week

Special Events

- Two (2) coroplast signs (3' H x 5' W) will be placed at each of the City of Hialeah city-wide special events held throughout 2015.

Interior

With the exception of the Milander Center, the City of Hialeah will grant permission for Florida City Gas to display a retractable banner stand ad display (36" x 79") year-round promoting Energy Conservation at each of the following facilities...

- **Milander Center**
(In conjunction with Energy Conservation Week)
- **Milander Aquatic Center**
- **Bucky Dent Water Park**
- **McDonald Water Park**
- **JFK Library**

SPECIAL EVENTS

- 2015 City of Hialeah Literacy Fair (pending grant approval by the Children's Trust)
 - Supporting Sponsor level sponsorship that will include an expanding booth space to incorporate a scheduled "Energy Conservation Seminar" provided for Literacy Fair attendees.

WEB AND INTERNET

Web

- Web presence to include: www.yosoyhialeah.com and www.hialeahfl.gov
- Web listing as an Official Energy Conservation Partner of the City of Hialeah as well as the promotion of the Florida City Gas Energy Conservation Week.

Social Media

- Inclusion in the City of Hialeah event page (Facebook) and other social media to include You Tube and Twitter promoting the Florida City Gas Energy Conservation Week and the Florida City Gas Seminar Series.

PUBLIC RELATIONS

- Creation/adoption of City of Hialeah "Energy Conservation Week" to be designated by the City of Hialeah Council. Dates to be determined upon mutual consent and availability.

USE OF WORDMARK

- Florida City Gas shall have the right to use the City's name and logo in its marketing and advertising programs promoting the partnership. Usage requires prior written approval/consent each time it is intended to be used.

TERMS

LENGTH OF AGREEMENT

- One (1) year (2015 calendar year) with an option to renew for an additional year.

OPTION TO RENEW

- Florida City Gas will have the option to renew the Agreement for one year under the same terms and conditions set forth.

FINANCIAL CONSIDERATIONS

- Fifteen (\$15,000) dollars payable to the City of Hialeah.

PAYMENT OPTIONS

The sponsorship fee shall be due within 30 days after execution of the agreement. Florida City Gas will have the option to pay the amount in full or on in four (4) equal installments of \$3,750 quarterly. The City of Hialeah will submit a quarterly payment schedule to Florida City Gas as well as all applicable invoices.